IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 831 of 2001

With

CRIMINAL APPEAL No. 834 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VINU KARMASHI RADADIA - Appellants
Versus
STATE OF GUJARAT - Opponents

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Appearance :
MS BHARTI RANA FOR MR ANIL S DAVE for Appellants.
MR RC KODEKAR, APP for Opponent.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. Since both these appeals are separately filed by the accused Nos. 1 & 2 against the same judgment and order of the learned Special Judge, Junagadh in Atrocity Special Case No. 60 of 1999, the same are being disposed of by this common judgment.

2. The brief facts giving rise to these two appeals are as under :-

3. That the complainant is the father of the prosecutrix and belonging to schedule caste community, while the present appellants are

belonging to Patel community and they are brothers. Both the appellants and the complainant are belonging to village Motimonpari of Visavadar Taluka of Dist. Junagadh. The case of the prosecution is that the complainant have got five daughters and one son wherein victim Ms. X is fourth child and she was kidnapped from the lawful custody and guardianship of the complainant and was seduced to sexual inter-course by the accused persons on 05.08.1999. At the time of the incident, the mother of the victim Ms. X was away from the village while complainant was in the field and only the victim Ms. X along with her sisters and brother were present in the house and when the complainant returned from the field, he came to know that the victim Ms. X has left the house whereupon he inquired about her in the surrounding place and when she could not be traced out, the complainant gave the Janvajog entry No. 10 of 1999 in Visavadar Police Station on 06.08.1999 and thereafter upon making further

inquiry, he came to know that in his absence, accused No. 1 i.e. Dinesh Karamshi Radadia of Motimonpari village kidnapped victim Ms. X on motorcycle and took her away to his field and against her will and consent, seduced to sexual intercourse and thereafter, he has taken her to Bilkha village where co-accused Vinu Karamshi Radadia was waiting for them along with another person, Raju. It is also the case of prosecution that victim Ms. X was taken to Junagadh Bus station and from there to Vapi at the residence of his brother Purushottambhai Karamshi. She was kept at Vapi without the consent of the parents of victim Ms. X. It is, therefore, the case of the prosecution that knowing fully well that the family of the complainant and the victim girl Ms. X were belonging to Harijan community, the accused persons kidnapped her and thereafter raped her and thus committed the offence punishable under Sections 363, 366, 376 & 34 of the Indian Penal Code and under Section 3 (1) (5) of the Prevention of

Atrocity (Schedule Caste and Schedule Tribe), Act.

4. Pursuant to registration of FIR, investigation was put into motion. During the course of investigation, statements of the witnesses were recorded, injury certificate of the victim was obtained, panchnama of the scene of offence was prepared, clothes of the accused as well as victim were also recovered by drawing a panchnama, which were sent to F.S.L. for chemical analysis. After obtaining F.S.L. Report and the certificate issued by the Doctor and also obtaining birth certificate of the victim, since sufficient incriminating evidence was found against the accused, they were charge-sheeted in the Court of learned Judicial Magistrate First Class, Visavadar.

5. As the offence under Sections 363, 366, 376 & 14 of IPC was exclusively triable by the court of Sessions, learned JMFC, Visavadar

committed the case to the Sessions Court, Junagadh. The learned Special Judge, Junagadh to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under Sections 363, 366, 376 & 14 of IPC as well as Section 3(1)5) of the Prevention of Atrocity (Schedule Caste and Schedule Tribe), Act.

6. The charge was read over and explained to the accused as the accused pleaded not guilty to the charge. They were put to trial and tried by the learned Special Judge, Junagadh in Atrocity Special Sessions Case No. 60 of 1999.

7. To prove the culpability of the accused, prosecution has in all examined as many as 17 witnesses, details of which are given in paragraph 3 of the impugned judgment. The prosecution has also produced as many as 31 documents and relied upon the contents of the same, details of which are enumerated in

paragraph 3 of the impugned judgment and order.

8. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge, Junagadh explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement, as required under Section 313 of the Code. In their further statement, the accused denied the case of the prosecution by reiterating that they have been falsely implicated.

9. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Special Judge has held that the victim was subject to rape by the accused No. 1 and the prosecution has established that the charge levelled against the accused Nos. 1 & 2 was proved beyond reasonable doubt and, therefore, the accused

were held guilty of the offence of kidnapping and rape and, therefore, they were convicted of the said offences.

10. Thereafter, the learned Special Judge, Junagadh heard the accused and their advocate on sentence and looking to the gravity of the offence committed by the accused and looking to the circumstances, original accused No. 1 i.e. Dinesh Karamshi Radadia was sentenced to suffer rigorous imprisonment of five years and fine of Rs. 2,000/- (Rupees Two Thousand Only) and in default thereof, simple imprisonment of two months for an offence punishable under Section 366 of the Indian Penal Code. The accused No. 1 was also convicted for rigorous imprisonment of 10 years with fine of Rs.5,000/- (Rupees Five Thousand Only) and in default thereof, simple imprisonment of three months for an offence punishable under Section 376 of IPC. The learned Special Judge has also awarded compensation of Rs.50,000/- to the victim and

if the appellant makes the payment of Rs.50,000/-, in that case, the sentence awarded for an offence punishable under Section 376 will be reduced to seven years from ten years and if the default is committed in payment of Rs.5,000/-, in that case, the appellant would be liable to undergo the sentence of simple imprisonment of five months. Original accused No. 2 i.e. Vinu Karamshi Radadia was sentenced to suffer rigorous imprisonment of three years and fine of Rs.1,000/- (Rupees One Thousand Only) and in default thereof, simple imprisonment of one month, for an offence committed under Section 363 and 366 of the Indian Penal Code.

11. Being aggrieved by the said judgment and order, both the accused have filed these two appeals.

12. Criminal Appeal No. 831 of 2001 filed by original accused No. 2 was admitted on 24.10.2001 and he was enlarged on bail.

13. Criminal Appeal No. 834 of 2001 filed by original accused No. 1 was admitted on 03.12.2001. An application for regular bail was not pressed by the appellant and hence, it was rejected as not pressed on 13.02.2002.

14. Ms. Bharti Rana, learned advocate appearing for Mr. Anil A. Dave, learned advocate for the appellants has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Special Judge dated 19.09.2001. She has submitted that the learned Special Judge has erred in convicting the appellants – accused though there are no ample or cogent evidence showing their guilt in the matter. She has further submitted that the learned Special Judge has failed to appreciate that the appellants are innocent and have not committed the alleged offence. The learned Special Judge has failed to appreciate that the complaint came to be

filed late by three days and the complainant has failed to explain the delay which shows that the complaint has been lodged intentionally and after great thought, the complainant has succeeded to involve the appellants. She has further submitted that the prosecutrix had an ample opportunity for running away and also talking to the persons who were staying nearby when she was left alone. The evidence of the prosecutrix recorded by Police was that she had love affairs with the accused No. 1 and had left her house on her own and she was not kidnapped nor seduced to sexual intercourse. She has further submitted that the learned Special Judge has not properly appreciated the evidence led by Dr. Gopalbhai. The panchas have turned hostile and did not support the case of the prosecution. The learned Special Judge has also not considered the evidence of the Investigating Officer and the evidence of the Principal of school in their true perspective. From the evidence of

the complainant, it was very apparent that the prosecutrix was aged more than 18 years at the time when alleged incident took place. The learned Special Judge has considered the school leaving certificate. However, the discrepancies found in the deposition of the Principal of the School were overlooked by him. There were major lapses on the part of the prosecution as the Investigating Officer has not made any attempt to obtain the birth certificate from the village Panchayat nor any ossification test was carried out in support of the prosecution version that the prosecutrix was minor at the time when the alleged incident took place. She has, therefore, submitted that the charges of kidnapping as well as rape were not proved against the accused and hence, the accused were liable to be acquitted or in any case they deserve benefit of doubt.

15. Ms. Rana has further submitted that the element of consent of the prosecutrix is

found all throughout and it cannot be said that the accused have imparted any threat or coercion or induced her to flee away with them. The prosecutrix was with the accused No. 1 and she left her house on the motor cycle of the accused No. 1. From there, she had gone to Vapi with accused No. 2 and stayed there for two days at the residence of the elder brother of the accused. During this period, there were ample opportunities for the prosecutrix to run away or get herself free from the custody of the accused. She has not informed any one nor raised any voice or lodged any protest. She has not shouted for any help and all throughout, she behaved in a manner as if she was with the accused out of her own free will and consent.

16.Ms. Rana has further submitted that the medical evidence of Dr. Gopalbhai does not support the case of the prosecution. The Doctor in his report as well as in his deposition has made it very clear that no

injury was found on the body of the accused nor any blood stains were found. The prosecutrix was in the habit of indulging in sexual intercourse. No semen was found on the clothes of the accused No. 1. The medical report was not supporting the case of the prosecution that any rape was committed by the accused No. 1 as alleged.

17. In support of her submission that the prosecution has failed to establish that the prosecutrix was less than 18 years of age on the date of incident and also for showing the failure on the part of the prosecution to substantiate the charge of kidnapping the prosecutrix, she has relied on the decision of the Hon'ble Supreme Court in the case of **Jinish Lal Sha V/s. State of Bihar, 2003 AIR SCW 74**. She has further relied on the decision of the Hon'ble Supreme Court in the case of **Sudhanshu Shekhar Sahoo V/s. State of Orissa, 2003 AIR SCW 154** for the proposition that for proving the charge of rape against

the accused, sole testimony of prosecutrix can form basis for conviction provided it is safe, reliable and worthy of acceptance. The Court in this case has observed that the medical evidence was revealing that the prosecutrix was habituated to sex, no stains of blood or semen were found on the clothes and many loose ends were found in prosecution case. This would make the accused entitled to benefit of doubt.

18.Ms. Rana has further relied on the decision of the Hon'ble Supreme Court in the case of **Ram Murti V/s. State of Haryana, AIR 1970 S.C. 1020** for the proposition that the question of age of the prosecutrix in cases under Sections 366 and 376 of Indian Penal Code is always of an importance. It was particularly so when according to the medical evidence, the prosecutrix was found to have been used to sexual intercourse and the rupture of the hymen was old. The Court has also observed that the evidence with regard

to the age should also be examined very closely and if there is no trustworthy evidence on the basis of which the conclusion cannot be arrived at that the prosecutrix was under 18 years of age, benefit of doubt should be given to the accused.

19. Based on the aforesaid submissions, true and correct appreciation of evidence led by the prosecution and the authorities on the subject, Ms. Rana has strongly urged that the impugned order and judgment passed by the learned Special Judge is required to be quashed and set aside and both the appellants in these two appeals are liable to be acquitted from the charge of offence levelled against them.

20. In support of his submission that evidence of a victim of sexual assault is enough and no further corroboration is necessary, Mr. Kodekar has relied on the decision of the

Hon'ble Supreme Court in the case of State of **Punjab V/s. Gurmit Singh and Others, (1996) 2 S.C.C. 384** wherein it is held that testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. He has further submitted that the prosecutrix cannot be discarded for not raising an alarm when being abducted. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook.

21. Mr. R.C. Kodekar, learned Additional Public Prosecutor appearing for the State, on the other hand, has supported the case of the prosecution and submitted that no interference is called for in the judgment

and order of conviction passed by learned Special Judge, while entertaining and deciding these two appeals filed under Section 374 of Cr.P.C. No case is made out by the appellants to take any different view in the matter. He has further submitted that the prosecutrix in her deposition Exh. 48 has stated that the accused No. 1 has taken her on his motor cycle to the field and he has committed rape. She has narrated the entire incident in her deposition. She has further submitted that the accused No. 1 has taken her thereafter to village Bilkha where the accused No. 2 was waiting for them and thereafter accused No. 1 has dropped her to Junagadh bus station and from there, they have gone to Vapi along with accused No. 2 and one Mr. Raju. She has also admitted that at Vapi, she has stayed for two days at the residence of the elder brother of the accused and thereafter, the elder brother's wife has dropped her to Visavadar police station. She has also admitted that the accused No. 1 has

tempted her, induced her and has given false promise that he would get marry with her and against her will or consent, he has committed rape. Mr. Kodekar has, therefore, submitted that on the basis of this deposition, both the charges of kidnapping as well as rape are proved against the accused persons and they have rightly been convicted for the said offences. The prosecutrix was minor aged about 15 years and two months at the time of incident. This fact was proved on the basis of the Certificate issued by Principal of the School and the Principal was also examined and he has admitted in his deposition that the certificate was issued on the basis of the school register maintained. He has further submitted that the charge regarding rape was proved on the basis of the medical evidence led by the prosecution.

22. Mr. Kodekar has further relied on the decision of the Hon'ble Supreme Court in the case of **Kamalnatha and Others V/s. State of**

Tamil Nadu, (2005) 5 SCC 194 for the proposition that consent for having sexual intercourse obtained by accused from the victim girls by deceitful means in some cases and under threat of dire consequences in some other cases is no consent at all and their acts fell under cl. Thirdly, while some of the victims being aged below 16 years, their consent was immaterial in view of cl. Sixthly. When the accused had dominion or control over the victims, such consent has no value. In all such cases, the charge about rape against the accused is believed to have been proved and they are liable to be convicted.

23. Based on the aforesaid submissions, facts of the case and the authorities relied upon by him, Mr. Kodekar has urged that the learned Special Judge has rightly convicted both the accused for the offences committed by them and no interference is called for by this Court especially when a well reasoned order

has been passed considering all the aspects of the matter. He has, therefore, submitted that both the appeals may accordingly be dismissed.

24. We have considered the submissions advanced by Ms. Bharati Rana, learned advocate appearing for the appellants and Mr. R.C. Kodekar, learned Additional Public Prosecutor appearing for the respondent – State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections.

25. The charge against the accused No. 1 was that on 5/8/1999 at about 12.00 a.m. He has kidnapped the victim minor girl aged about 15 years and two months from the legal custody and guardianship of the complainant, Kalabhai

Vastabhai, the father of the victim, residing at village Moti Monpari with a view to establish extra marital sexual relations and the accused No. 2 has helped him to fulfill this common intention and thereby both these accused have committed an offence punishable u/S. 363 & 366 of Indian Penal Code.

26.Moreover, further charge against accused No. 1 was that after kidnapping the victim on 5/8/1999 at about 12.00 a.m., he has taken her at his field in the sim of village Moti Monpari and entered into sexual intercourse with her and raped her. The accused No. 2 has helped him in commission of such illegal act and thereby both the accused have committed an offence punishable under Section 376 and 34 of the Indian Penal Code.

27.Though the charge under Section 3 (1) (5) of the prevention of Atrocity (Scheduled caste and Schedule Tribes) Act was levelled against them, the said charge was not proved and

hence both the accused were acquitted from the said charge.

28. We may now advert to the oral testimony of the victim herself, who has been examined as PW – 9 at Exh. 48 on 27.06.2001. It may be noted that prior to recording her oral testimony, the Visavadar Police has recorded her statement on 09.08.1999. It is true that statement recorded by Police has no evidentially value, but, for the purpose of corroboration or contradiction, the same can be referred to. She has stated in that statement that she was working with her parents at the field of Karamshibhai for the last one year and during this period, she came in contact with Dinesh – accused No. 1 and started relations with him. They loved each other and used to write letters. They frequently meet each other in the field and willingly entered into sexual intercourse. She has further stated that her brother did not like this relation and used to beat her.

She has gone with Dinesh at the field willingly and entered into sexual intercourse there. From the police station, she did not want to go to her parent's house but she expressed her desire to go to her maternal uncle's house at Chanaka.

29. The above statement of the victim gets corroboration from the evidence of Investigation Officer, Ramjibhai Savjibhai Dhanani, PW – 17 at Exh. 60, recorded on 06.07.2001. The victim has, however, given total go bye to her earlier statement recorded by Police. She has denied everything what was recorded by the Police and stated that the accused have kidnapped her without her will and induced her for sexual intercourse against her consent. In her cross-examination, she has, however, stated that she has neither protested nor made any attempt to get herself free and to run away. Even while going to Vapi, she has neither shouted nor told any one about the incident.

The victim's evidence does not inspire the confidence of the Court in view of the number of contradictions and omissions and also in view of the other evidence recorded and medical testimonies collected by the prosecution.

30. So far as corroborative evidence is concerned, the prosecution relied upon the evidence of PW – 5, Kalabhai Vastabhai, Complainant and the father of the victim. In his deposition, he has stated that he has five daughters and one son. Son Gabhru is the eldest and the victim is the third daughter aged about 20 years as on 26.06.2001 when his statement was recorded. He has admitted that he was not aware about the birth date of his daughter, the victim. However, she might be around 16 to 17 years old at the time of incident. In his cross-examination, he stated that the victim's age is 16 years at present. Thus, there are different versions given by this witness about the age of the victim. He

has further stated in his cross-examination that when he reached his home on 5.8.1999, his daughters have told him that his son, Gabhru got angry with the victim and beaten her and hence she has left the home. Thus, the evidence of this witness does not support the case of the prosecution that the accused have kidnapped the victim and forcefully induced her for sexual intercourse. In any case, on the basis of evidence of this witness, it is not sufficiently proved that the victim was below the age of 18 years, much less minor at the time of incident.

31. For establishing the prosecution case that the victim was minor at the time of incident, the prosecution has examined PW – 12, Mohanlal Mansur at Exh. 51, who was the Principal of Moti Monpari Pay Centre School. He has proved the certificate dated 10.08.1999 Exh. 55 issued by the School certifying that the victim's birth date is 01.06.1984. However, this witness has

admitted that the certificate was issued on the basis of birth register and birth date of the victim was entered on the say of the guardian of the victim. This witness, however, failed to produce guardianship form on the basis of which birth date of the victim was entered in the register. He has further admitted that the parents or guardians are telling the birth date of their children, not on the basis of their birth certificates issued by the Panchayat, but merely on inferences. He has further admitted that the victim's birth date was not entered in the register on the basis of birth certificate but merely on the basis of inferences. Thus, in absence of birth certificate issued by the village Panchayat or ossification test carried out by the Doctor, it cannot conclusively be proved that the victim was below the age of 18 years on the date of incident.

32.Now, so far as the medical testimony is

concerned, the prosecution has examined PW – 1, Dr. Gopalbhai Kadavbhai Gadhesaria at Exh. 8. He has stated that on 9.8.1999, when he was on duty in Samuhik Arogya Kendra, Visavadar, the victim was brought to her for medical examination with police yadi of Police-Sub-Inspector, Visavadar. He stated that the victim's main organs were fully developed. No blood stains were found either on her body or her clothes. No semen was found on her body or on her clothes. No injury was found on her body. On the basis of his medical examination, his opinion was that her hymen was ruptured and she was habituated to sexual intercourse.

33. This witness has also taken medical examination of accused No. 1. He found that the accused's body organs were fully developed. No blood stains were found on his body or clothes. No semen was found on his body or clothes. No signs of injury were found on his body. His penny was normal and

fully developed. He has further stated that the accused has not made sexual intercourse during last 24 hours prior to his medical examination. This witness has further admitted that the ossification test about the age of the person was not carried out in the Visavadar Hospital. Thus, this medical evidence does not support the case of the prosecution that the victim was minor or below the age of 18 years old or the accused No. 1 has committed rape on the victim in near past.

34.With regard to the determination of age of the prosecutrix, it is worthwhile to refer to the observations made by the Hon'ble Supreme Court in the case of **Ram Murti V/s. State of Haryana, AIR 1970 S.C. 1020**. It is observed therein that in cases under Sections 366 and 376, age of prosecutrix is always of importance, particularly so where according to medical evidence, she was found to have been used to sexual intercourse and there was

old rupture of hymen. Where the accused is sought to be acquitted of offence under Section 376, the Court should examine the question of age more closely. In the case before the Hon'ble Supreme Court, an unproved and unexhibited school certificate was relied on. The Court took the view that there is no trust-worthy evidence on record on which the conclusion that prosecutrix was under 18 years of age on the date of incident, can safely be founded. In the present case, though the School Certificate is proved and exhibited, the evidence of School Principal does not inspire the confidence of the Court. Looking to the other evidence such as complainant's deposition, medical evidence and failure of prosecution to obtain birth certificate of the prosecutrix from the village Panchayat and ossification test of the prosecutrix about her age, it is difficult to arrive at the conclusion that the prosecutrix was under 18 years of age on the date of incident.

35.While arriving at the above finding, we may derive support from the decision of the Hon'ble Supreme Court in the case of **Jinish Lal Sha V/s. State of Bihar, 2003 AIR SCW 74**, wherein the charge against the accused was for kidnapping woman to compel her to marry and for rape. Sequence of events showed that prosecutrix accompanied accused willingly. Father of the prosecutrix stated in the FIR that prosecutrix went away by taking clothes and gold chain and some cash showing that there was no threat or inducement. The Court, therefore, held that accused was not liable to be guilty under Section 366 or 376 in absence of proper appreciation of evidence in regard to consent of prosecutrix which is mandatory requirement before finding a person guilty under Section 366 or 376 of IPC.

36.We may also refer to the decision of the Hon'ble Supreme Court in the case of **Sudhansu Sekhar Sahoo V/s. State of Orissa, 2003 AIR**

SCW 154, while recording acquittal of the accused from the charge of offences under Section 366 and/or 376 of IPC. In the case before the Hon'ble Supreme Court, the prosecutrix was an unmarried educated woman travelling along with accused at night in a Jeep for long distance allegedly for meeting her superior Officer. She alleged that accused raped her in his house when they reached there. Her conduct was found to be unusual. Medical evidence did not corroborate her version. No stains of blood or semen were found on her clothes. Her assertion that she was virgin till alleged incident, was contrary to medical evidence revealing that she was habituated to sex. On these facts, the Court held that it is true that the sole testimony of the victim of a sexual offence can be a basis for conviction provided it is safe, reliable and worthy of acceptance. In the present case, in view of the conduct of the prosecutrix, complainant's deposition, medical evidence, lack of adequate evidence

regarding her age, it can not be said that for convicting the accused, evidence collected by the prosecution are safe, reliable and worthy of acceptance.

37. In view of the above decisions and looking to the peculiar facts of this case, the judgments relied upon by Mr. Kodekar, do not help the case of the prosecution. There cannot be two opinions about the propositions laid down therein. The sexual violence is a dehumanising act and it is an unlawful encroachment into the right to privacy and sanctity of woman. The Courts also should be strict and vigilant to protect the society from such evils. It is in the interest of the society that serious crimes like rape should be effectively investigated. It is equally important that there must be fairness to all sides. If the evidence of the prosecutrix is shaky and if it does not get corroboration, the Court is little slow in pronouncing the conviction on that basis.

38. In view of the aforesaid evidence and case-law on the subject, we are of the view that the sole testimony of the victim herself is not sufficient to establish the charge of rape against the accused against her wish. It is more so when her oral testimony did not match with the statement recorded by the Police. Her oral testimony is not corroborated by the evidence of Dr. Gopalbhai. A perusal of the FSL Report also does not suggest that the semen or blood stains were found on the body or clothes of the accused or victim.

39. In view of the aforesaid discussion, we are of the opinion that the prosecution has not established the charge levelled against the accused for kidnapping the victim or commission of rape on the victim. Therefore, it is not necessary for us to discuss the evidence of other prosecution witnesses.

40. On having close scrutiny of the evidence, we find that the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Special Judge, Junagadh call for interference from our end. For the foregoing discussions and reasons, we are unable to find ourselves in agreement with the findings, ultimate conclusion and resultant order of conviction and sentence. We are of the view that it is not only the case of benefits of doubt being given to the accused but also a case of clean acquittal. The accused are accordingly acquitted from the charge of offence levelled against them. The accused No. 1 be set at liberty forthwith, if his presence is not required for any other offence. Since the accused No. 2 is enlarged on bail, his bail bonds stand canceled.

41. For the foregoing reasons, both these appeals succeed and are accordingly allowed.

[A. M. KAPADIA, J.]

[K.A. PUJ, J.]

Savariya